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THE INVALIDITY OF SUNDAY CONTRACTS.

In the *Sentinel Co. v. A. D. Meiselbach Motor Wagon Co.*, 128 N. W., 861 (Wis.), the plaintiff alleged that the defendant company was indebted to them for advertising in the plaintiff's newspaper, which was published on week-days and Sundays, and the defendants offered as a defense the statute which prohibits labor, business, or working, except work of necessity and charity from being carried out on Sunday. The court decided that the plaintiff could recover on *quantum meruit* for the value of the advertising furnished on secular days, but could not recover for work done on Sunday.

In *Williams v. Paul*, 6 Bing., 653, which was decided a little over a century ago, it was held that where the defendant had purchased a heifer from a drover on Sunday and having made several subsequent promises to pay for and had kept the beast he was liable at all events on *quantum meruit*, notwithstanding the contract was performed on Sunday. It would seem that the learned judge in this case was willing to extend the bounds of the common law rule, which declares all contracts to be fully consummated on Sunday are void and establish a precedent.

In regard to newspaper advertisements to be published on Sunday, *Smith v. Wilcox*, 24 N. Y., 353, is directly in point, holding that inasmuch as a newspaper is merchandise when sold, a contract for the publication of an advertisement in a newspaper to be published and sold on Sunday is a servile task and therefore void. In *Sayles v. Smith*, 12 Wend., 57, although the facts are somewhat different, the effect is the same, for that case held that a contract made on Sunday for the publication of an advertisement on week-days is not void, inasmuch as the contract would not be performed on Sunday. In regard to a request for services made on Sunday to be given on a week-day, the same conclusion was reached in *Dickinson v. Richmond*, 97 Mass., 45, which held that such a contract was valid.

It seems that the states which have not adopted the common law rule have incorporated into their law by statute certain provisions which bring about the same result. Most statutes make an exception in the case of necessities and charities. *Flagg*

v. Inhabitants of Millbury, 4 Cush., 243, in discussing necessities held that what is meant by the word necessity as a work to be done on Sunday, is not meant a physical and absolute necessity, but any labor which is morally fit and proper to be done on that day under the circumstances of the particular case, is a work of necessity within the statute.

A newspaper is not, in the strict meaning of the word, a necessity, however; business associations which advertise to a great extent in newspapers and others who employ the columns of a newspaper to bring their names and professions before the public may regard a newspaper as a most valuable asset for bringing success, and a Sunday advertisement is as fruit-bearing as one published on a week-day. To publish a newspaper on Sunday and to claim that it is a necessity may be stretching the meaning of that word to the limit; however, in accordance with the laws of morality to-day, the publication of a Sunday newspaper is not generally regarded as an immoral act.

At the time the common law was invoked and most of the states formulated their laws, the Sabbath was more reverently kept than it is to-day, and Sunday newspapers were unknown. To consider the publication of a newspaper a fit occupation to be performed on Sunday would seem reasonable within the holding of *Flagg v. Inhabitants of Millbury*, *Supra*, under the present laws of morality.

Having considered the publication of a newspaper on Sunday valid, its contents must next be considered. One of the most important elements of a newspaper is its advertising, and if we consider the publication of a newspaper on Sunday as valid we must consider the newspaper as a unit and not detract any of its component parts, and so a contract to pay for Sunday advertising must also be considered as valid.

The law is not in the least flexible on the point of Sunday contracts and the courts cannot abandon it entirely, and thus establish precedents, but it would seem that such laws should be changed, so as to conform with the present-day life and in order that one may not profit by the labor of another.